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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,660	03/23/2001	George Henry Hoffman	41556/04024(RSI1P036)	5838
22428	7590	06/01/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			GORT, ELAINE L	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/815,660

Applicant(s)

HOFFMAN ET AL.

Examiner

Elaine Gort

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3627

MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 and 13-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5,8,10,13.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of claims 7-12 in Paper No. 12 is acknowledged.

Claims 1-6 and 13-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 12.

### *Double Patenting*

2. Claims 7-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all the claims filed in the following Applications because they are not patentably distinct:

09/815559  
09/815590  
09/815660  
09/815688  
09/815727  
09/815729  
09/815731  
09/815734  
09/815759  
09/815792  
09/815813  
09/815864  
09/815894  
09/815899  
09/816033  
09/816075  
09/816083  
09/816092  
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09/816167  
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09/816431  
09/816434  
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09/816455  
09/816495  
09/816503  
09/816507  
09/816536  
09/816555  
09/816560  
09/816561  
09/816567  
09/816582  
09/816881  
09/816922  
09/816944

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 7-12 are rejected because they lack patentable utility. Claims 7-12 merely claim the manipulation of data but perform no concrete, useful or tangible result. This rejection may be overcome by claiming the generation of a report or output of data.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 7 line 6 Claim 7 recites the limitation "the data for ordering food and beverage" in line 6. There is insufficient antecedent basis for this limitation in the claim.

In claim 7 line 9 it is unclear what is being claimed relating to "the data". It is unclear as the term data is used in lines 3, 4, and 6 and it is unclear if this data is all referring to the same data.

In claim 7 line 11 it is unclear what is being claimed relating to "the data". It is unclear as the term data is used in lines 3, 4, 6 and 9 and it is unclear if this data is all referring to the same data.

In claim 7 line 13 it is unclear what is being claimed relating to "the data". It is unclear as the term data is used in lines 3, 4, 6 and 11 and it is unclear if this data is all referring to the same data.

In claims 8, 9, 10 and 12 it is also are unclear what is being claimed regarding to "the data" as claim 7 refers to data in lines 3, 4, 6, and 11 and it is unclear if this data is all referring to the same data or two types of data.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 7-12 are rejected under 35 U.S.C. 102(b) as being anticipate by Shavit et al. (US Patent 4,799,156).

Shavit et al discloses the claimed system for managing a food and beverage supply chain utilizing a network, comprising:

Logic for receiving data from a plurality of food and beverage outlets of a food and beverage supply chain utilizing a network (see figure 2 which shows buyers in communication with the system, for example the buyer enters information in a RFQ to obtain a quote/bid disclosed in column 13, lines 10+), the data relating to the sale of food and beverage by the food and beverage outlets (column 6, line 21 discusses the system being used for "goods" which by definition incorporates food and beverages);

Logic for generating an electronic order form based on the data for ordering food and beverage from a food and beverage distributor of the food and beverage supply chain (see figure 2, such as when the bid is converted to an order, column 13, lines 56+);

Logic for transmitting the data to the food and beverage distributor of the food and beverage supply chain utilizing the network (data from the buyer is transmitted to the distributor to get a RFQ or to place the order, see figure 2, column 13 lines 10+ and lines 51+);

Logic for transmitting the data to a food and beverage supplier of the food and beverage supply chain utilizing the network (see figure 2 and column 11, line 17 regarding sellers communicating concurrently with suppliers);

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Logic for forecasting activity in the food and beverage supply chain utilizing the data (column 7, line 19);

Regarding claim 8, where the data is parsed to match each of a plurality of food and beverage distributors and food and beverage suppliers (relevant data is sent a supplier in order for the distributor to procure the items to fill the buyer's order, column 11, line 17);

Regarding claim 9, where the data is accessible to the food and beverage distributor and the food and beverage outlets, the food and beverage distributor, the food and beverage supplier via a network-based interface (such as column 5, lines 50+ discloses public networks);

Regarding claim 10, where the data is accessible to the food and beverage distributor and the food and beverage supplier only after verification of an identity thereof (user id and passwords are used to identify users to validate access, column 9 lines 43-65 and column 10 lines 1-15);

Regarding claim 11, where the network includes the Internet (such as column 5, lines 50+ discloses public networks, the Internet is a public network); and

Regarding claim 12, where the food and beverage outlets, the food and beverage distributor, and the food and beverage supplier each forecast utilizing the data (column 7, lines 15+ discloses where the system is capable of providing users with forecasting capabilities).



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***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Elaine Gort  
Examiner  
3627

May 25, 2004